

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1698 OF 2006

Prakash @ Appa Haribhau Londhe ...Petitioner.

Versus

The State of Maharashtra ...Respondent.

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Mr.U.P.Warunjikar, Advocate for the Petitioner.
Mr.D.S.Mhaispurkar, APP, for the Respondent-State.
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**CORAM : SMT.RANJANA DESAI AND
SMT.V.K.TAHILRAMANI, JJ.**

DATE OF RESERVING
THE ORDER : JANUARY 23, 2007.

DATE OF PRONOUNCING
THE ORDER : JANUARY 29, 2007.

ORAL ORDER (PER SMT.V.K.TAHILRAMANI, J.)

1. Heard Mr.Warunjikar learned counsel for the petitioner and Mr.Mhaispurkar learned APP for the State.

2. Rule. By consent, Rule is made returnable forthwith and heard finally.

3. It is the case of the petitioner that one Gorakh Baban Kankate alongwith nine others had

committed the murder of Vilas @ Bhau Haribhau Londhe. The said Vilas @ Bhau Haribhau Londhe was the brother of the petitioner. In the said case i.e. C.R.No.64 of 2002 Gorakh Baban Kankate and five others came to be convicted under Section 302 of IPC and the other accused came to be acquitted. After his conviction, Gorakh Baban Kankate preferred an application for parole on 22nd July, 2005 and the said application came to be granted on the ground that his aged father was sick. It is the case of the petitioner that the Authorities while granting parole did not take into consideration the applications/letters, preferred by the petitioner himself as well as by Smt.Sujata Vilas Londhe i.e. the widow of Vilas Londhe, as well as other facts and circumstances and hence an enquiry be conducted against the police authorities.

4. We have perused the application of the petitioner dated 16.8.2005 as well as statement of Smt.Sujata Vilas Londhe. In both these documents, it is noticed that, there are no specific allegations against Gorakh Baban Kankate. In both these documents, there are no allegations against Gorakh Baban Kankate, but, the allegations are only against

the original accused Nos.7 to 10 who have been acquitted by the Court. In both these documents it is stated that original accused Nos.1 to 6 have been convicted and the remaining accused i.e. accused Nos.7 to 10 have been acquitted. It is further stated that these accused Nos.7 to 10 are from time to time threatening the widow of Vilas Londhe and other witnesses. From both these documents it is clear that threats have been given by the acquitted accused Nos.7 to 10. It is also stated that these accused i.e. acquitted accused Nos.7 to 10 have thrown stones on their house. In these circumstances, it is prayed that parole may not be granted to original accused Nos.1 to 6. It may be stated here that Gorakh Baban Kankate is original accused No.1. Copies of these applications/letters have been sent to various authorities including PI, Western Region, Pune, Divisional Commissioner of Police, Pune and other authorities.

5. It may be stated here that the appeal filed by Gorakh Kankate is pending before the High Court. The High Court has granted bail to him and on account of being granted bail, he is outside. After Gorakh

Kankate has been granted bail, there have been no allegations against him that he has misused the liberty granted to him. Moreover, the report submitted by the Police in respect of the parole application preferred by Gorakh Baban Kankate shows that on earlier two occasions Gorakh Kankate had been released on parole and he has not misused the liberty granted to him. The first occasion that Gorakh Baban Kankate came to be released on parole was on account of death of his brother Ashok Baban Kankate. On account of the death of brother of Gorakh Kankate he was granted parole from 7.7.2004 to 29.7.2004. Thereafter, Krishnabai Baban Kankate the mother of Gorakh Baban Kankate expired on 8.1.2005. On account of this Gorakh Kankate was granted parole for five days. On both these occasions when he was granted parole he did not indulge in any untoward incident. Taking all these facts into account, the Authorities submitted the report that there was no objection to Gorakh Baban Kankate being granted parole.

. As far as the application of the petitioner and the statement of widow of the deceased is concerned we find no concrete material therein against Gorakh

Baban Kankate for the Authorities to reject the parole application. We have already observed that there are no allegations against Gorakh Baban Kankate in both these documents.

6. Thereafter Mr.Warunjikar submitted that Gorakh Baban Kankate was released on temporary bail i.e. in the period between 7.7.2004 and 19.7.2004. In the said period Gorakh Kankate was involved in C.R. No.237 of 2004 of Loni Kalbhor Police Station. The said case is under Sections 348, 357, 387, 324, 504 and 506 read with 34 of IPC. In the said case the complaint came to be lodged on 4.9.2004 and Gorakh Baban Kankate came to be arrested on 8.9.2004. Mr.Warunjikar submitted that looking to this fact the Authorities ought not to have released Gorakh Baban Kankate on parole. As far as this case is concerned it not the case of the petitioner that the said case pertained to either himself or the widow of the deceased or any of the witnesses in C.R.No.64 of 2002. From this it is clear that the witnesses in the said case were entirely different persons and had nothing to do with the petitioner.

7. It is true that the report submitted by Police does not mention this C.R. It is always proper that when parole is sought by a prisoner a report ought to be called for from the police authorities regarding the grant of parole to the prisoner and that the Police Authorities after making necessary enquiries should submit a comprehensive report. The said report ought to be carefully considered and then decision ought to be taken whether the prisoner ought to be granted parole or not. No doubt the police ought to have pointed out this CR in their report. However, as observed by us the petitioner or any of the witnesses pertaining to C.R.No.64 of 2002 are not concerned with the C.R.No.237 of 2004. In such case, it cannot be said that there was such a lapse on the part of the Authorities that it requires any action to be taken against any of the police officials concerned. From the files produced before us it appears that the Authorities have applied their mind to the facts of this case and have thereafter decided to release Gorakh Baban Kankate on parole. It cannot be said to be a case of total non-application of mind on the part of the Authorities. It cannot be said that the decision taken by the Authorities to release

Gorakh Kankate on parole was a perverse decision or that it smacked of malafides or any other considerations. In the facts and circumstances of the case, the Authorities could have exercised their discretion to release Gorakh Baban Kankate on parole which they have done. We find no fault with the decision of the Authorities. Hence, we find no merit in the prayer of the petitioner that any action should be taken against the police or any other Authority. The said prayer is rejected. We make it clear that we have decided this Petition in the light of the prayers made by the petitioner in this Petition. If the petitioner has any other grievances, he is at liberty to adjudicate the same before the appropriate forum.

8. In view of the above, the Petition fails. Rule stands discharged.

[SMT.RANJANA DESAI, J.]

[SMT.V.K.TAHILRAMANI, J.]